

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 15, 2011

In the Matter of J. A. ELLIOTT, Minor.

No. 305485
Cass Circuit Court
Family Division
LC No. 10-000123-NA

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Respondent-appellant father appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of the adjudication continue to exist),¹ and (g) (failure to provide proper care or custody). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). The court must also find that termination is in the best interests of the child. MCL 712A.19b(5). We review for clear error a trial court's decision to terminate parental rights, including its determination that a statutory ground for termination has been proved by clear and convincing evidence and that termination is in the child's best interests. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court did not clearly err by finding that the ground for termination set forth in MCL 712A.19b(3)(c)(i) was met by clear and convincing evidence. There were several conditions leading to the adjudication, including among other things, respondent's mental health,

¹ The trial court held that MCL 712A.19b(3)(c) had been established by clear and convincing evidence without specifically distinguishing between subsections (c)(i) and (c)(ii). It is clear from the trial court's statements at the termination hearing, however, that subsection (c)(i) was the ground relied upon for termination.

his history of physical and verbal domestic abuse, and his ongoing anger management and impulse control issues. As noted by the trial court, however, the primary condition was his refusal to work with case management and to fully participate in the services offered to him. This condition continued throughout the proceedings, impeding him from any chance of reunification with the minor child. Respondent did not fully participate in or benefit from the services included in the service plan, including therapy sessions, case management services, housing assistance, parenting training, and anger management classes. At the time of the termination hearing, he had ongoing mental and emotional health issues and his relationship with the child's mother continued to be volatile. Accordingly, we hold that the trial court did not clearly err by finding that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time considering the child's age.

We further hold that the trial court did not clearly err by finding that the ground for termination set forth in MCL 712A.19b(3)(g) was met by clear and convincing evidence. At the time of the termination hearing, respondent and the child's mother were living in a homeless shelter and there was no evidence that they would be able to secure alternate, suitable housing within a reasonable amount of time. Respondent's parenting skills were poor, and the DHS case worker believed that giving respondent unsupervised parenting time would pose a danger to the minor child. Furthermore, "a parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Given respondent's refusal to fully engage in the service plan, there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age.

Finally, the trial court did not clearly err in its assessment of the minor child's best interests. In addition to respondent's lack of compliance with the service plan, there is no evidence of a bond between respondent and the child. The child was removed from respondent's care within days of his birth, and respondent's last parenting session with him was four months before the termination hearing. Respondent did not appear at the termination hearing or the previous permanency planning hearing. Moreover, the child had been living with his maternal grandparents and was developing normally. He was bonded to his grandparents; they provided him with a stable living environment, and they had expressed a desire to adopt him. Consequently, we find no clear error in the trial court's determination that terminating respondent's parental rights was in the child's best interests. MCR 3.977(K).

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello